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Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 GERALD ROSS, Derivatively and on Behalf
14 of DEPOMED, INC.,

15 Plaintiff,

16 vs.

17 JAMES P. FOGARTY, KAREN A. DAWES,
18 ARTHUR J. HIGGINS, LOUIS J. LAVIGNE,
19 JR., WILLIAM T. MCKEE, GAVIN T.
20 MOLINELLI, ROBERT G. SAVAGE,
21 PETER D. STAPLE, JAMES L. TYREE,
22 SAMUEL R. SAKS, M.D., JAMES A.
SCHOENECK, DAVID B. ZENOFF,
SRINIVAS G. RAO, M.D., PH.D. and R.
SCOTT SHIVELY,

23 Defendants,

24 and

25 DEPOMED, INC.,

26
27 Nominal Defendant.

Case No. 3:17-cv-06592-JST

**JOINT STIPULATION & [PROPOSED]
ORDER STAYING CASE PENDING THE
MOTION TO DISMISS IN THE
RELATED SECURITIES CLASS ACTION**

1 WHEREAS, Plaintiff Gerald Ross (“Plaintiff”) filed the above-captioned derivative action
2 (“Derivative Litigation”) on November 15, 2017, against Defendants James P. Fogarty, Karen A.
3 Dawes, Arthur J. Higgins, Louis J. Lavigne, Jr., William T. McKee, Gavin T. Molinelli, Robert G.
4 Savage, Peter D. Staple, James L. Tyree, Samuel R. Saks, M.D., James A. Schoeneck, David B.
5 Zenoff, Srinivas G. Rao, M.D., Ph.D. and R. Scott Shively (collectively, “Individual Defendants”
6 and together with Nominal Defendant Depomed, Inc., the “Defendants”) (Plaintiff and Defendants
7 are collectively referred to herein as the “Parties”);

8 WHEREAS, the Parties hereby jointly stipulate to stay the Derivative Litigation until and
9 through the resolution of the motion to dismiss that is anticipated to be filed in the related securities
10 class action lawsuit against Depomed, Inc., Arthur J. Higgins, James A. Schoeneck, and August J.
11 Moretti, captioned *Huang v. Depomed, Inc., et al.*, No. 3:17-cv-04830, in the United States District
12 Court for the Northern District of California (the “Securities Class Action”); and

13 WHEREAS, this Parties believe that a stay of this action will promote the efficient and
14 orderly administration of justice by coordinating the Derivative Litigation with the Securities Class
15 Action;

16 NOW, THEREFORE, the Parties, by and through their undersigned counsel of record,
17 hereby agree and stipulate to the following:

- 18 1. Defendants waived the service of summons and accepted service of the Complaint with
19 Defendants response due on or about January 16, 2018;
- 20 2. The Derivative Litigation (and all discovery) shall be stayed until 30 days after the
21 earlier of the following of events: (a) the Securities Class Action is dismissed in its
22 entirety with prejudice; or (b) Defendants file an answer to any complaint in the
23 Securities Class Action;
- 24 3. If the stay of proceedings expires pursuant to Paragraph 2 above, the Parties shall meet
25 and confer and submit a proposed scheduling order governing further proceedings in
26 the Derivative Litigation, including the date by which Defendants must answer or

1 otherwise plead;

- 2 4. All hearings or conferences currently scheduled, including the Case Management
3 Conference currently scheduled for January 31, 2018, shall be postponed until after the
4 stay of the Derivative Litigation expires;
- 5 5. Should discovery proceed in the Securities Class Action, or in any other subsequent
6 derivative action based on substantially the same factual allegations underlying the
7 Derivative Litigation and/or in connection with any threatened related derivative action
8 (including any books and records demand made by a Depomed, Inc. shareholder), and
9 the Derivative Litigation continues to be stayed by virtue of this Stipulation, a further
10 Stipulation or Court Order, Plaintiff will promptly be given copies of any written
11 discovery responses, documents, and deposition transcripts prepared and/or produced
12 by any Defendants and/or any non-party, such as are relevant to the claims or defenses
13 in the Derivative Litigation, pursuant to a mutually agreed upon protective order
14 governing the use of confidential information. The provision of any such discovery
15 materials will not constitute waiver of, or in any way limit, Defendants' right to move
16 to dismiss the Derivative Litigation for failure to adequately plead demand futility, or
17 make a pre-suit demand. Notwithstanding the foregoing, Plaintiff reserves his rights to
18 seek any such discovery materials in the Derivative Litigation;
- 19 6. Plaintiff acknowledges that his right to receive written discovery responses, documents,
20 deposition transcripts, and any other information described above is contingent upon
21 his agreement to be bound by any confidentiality agreement or order governing the
22 materials produced in the Securities Class Action or any related derivative action, with
23 the express understanding that Plaintiff shall be entitled to use any such materials
24 produced to him pursuant to this stipulation in the Derivative Litigation. If Plaintiff
25 cannot become a party to any confidentiality agreement or order entered in the
26 Securities Class Action or any related derivative action, he agrees that he will enter into

1 a separate agreement with Defendants acknowledging his agreement to be bound by
2 the terms of the confidentiality agreement or order entered in the Securities Class
3 Action or any related derivative action, with the express understanding that Plaintiff
4 shall be entitled to use any such materials produced to him pursuant to this stipulation
5 in the Derivative Litigation, and further agrees that his acknowledgement agreement
6 may be enforceable in the Derivative Litigation;

7 7. The Parties shall promptly notify each other of any related derivative lawsuits or
8 threatened related derivative lawsuits of which they become aware;

9 8. Defendants shall promptly notify Plaintiff if the plaintiff in any related derivative
10 lawsuit refuses to agree to a stay that is for the same or longer duration;

11 9. If the plaintiff in any related derivative lawsuit refuses to agree to a stay that is for the
12 same or longer duration, after conferring with the opposing party, any party may lift
13 the stay upon 30 days' notice via email to all of the undersigned counsel, in which event
14 each party reserves the right to make a motion to stay the Derivative Litigation;

15 10. Plaintiff will promptly be advised of, and be permitted to participate in, any mediation
16 proceedings and in any formal settlement talks in the Securities Class Action, in any
17 related derivative action, and/or in any threatened related derivative action;

18 11. Notwithstanding this stay of the Derivative Litigation, Plaintiff may file an amended
19 complaint. Without waiving any defenses or objections, Defendants shall be under no
20 obligation to answer, move, or otherwise respond to any such complaints while the
21 State Derivative Action is stayed; and

22 12. This Stipulation shall not preclude or prevent the Parties from stipulating to, or filing a
23 motion seeking, a court order lifting, modifying, or extending the terms of this
24 stipulation, and any Party's right to oppose such a motion

25 13. The existence of this stipulation, the contents thereof, and any negotiations or
26 proceedings in connection therewith shall not be deemed a presumption, concession,

1 finding, or admission by any of the Parties of any fault, liability, or wrongdoing; and
2 14. The Parties respectfully request the Court to enter an Order to this effect.
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8 **STIPULATED AND AGREED TO:**

9 DATED: January 15, 2018

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

11 By: /s/ Michael A. Mugmon
12 Michael A. Mugmon (SBN 251958)
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and Nominal Defendant*

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Attorneys for Plaintiff

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ATTESTATION OF E-FILED SIGNATURE

I, Benjamin Heikali, am the ECF User whose ID and password are being used to file the foregoing document in compliance with Civil L.R. 5-1(i)(3). I attest that all other signatories listed, and on whose behalf the filing is being submitted, concur in the filing's content and have authorized the filing of this stipulation.

Dated: January 15, 2018

By: /s/ Benjamin Heikali

Benjamin Heikali

~~PROPOSED~~ ORDER

Based upon the above stipulation of the Parties and for good cause appearing:

1. The Derivative Litigation (including all discovery) shall be stayed until 30 days after the earlier of the following of events: (a) the Securities Class Action is dismissed in its entirety with prejudice; or (b) Defendants file an answer to any complaint in the Securities Class Action;
2. If the stay of proceedings expires, the Parties shall meet and confer and submit a proposed scheduling order governing further proceedings in the Derivative Litigation, including the date by which Defendants must answer or otherwise plead;
3. All hearings or conferences currently scheduled, including the Case Management Conference currently scheduled for January 31, 2018, shall be postponed until after the stay of the Derivative Litigation expires;
4. Should discovery proceed in the Securities Class Action, or in any other subsequent derivative action based on substantially the same factual allegations underlying the Derivative Litigation and/or in connection with any threatened related derivative action (including any books and records demand made by a Depomed, Inc. shareholder), and the Derivative Litigation continues to be stayed by virtue of this Stipulation, a further Stipulation or Court Order, Plaintiff will promptly be given copies of any written discovery responses, documents, and deposition transcripts prepared and/or produced by any Defendants and/or any non-party, such as are relevant to the claims or defenses in the Derivative Litigation, pursuant to a mutually agreed upon protective order governing the use of confidential information. The provision of any such discovery materials will not constitute waiver of, or in any way limit, Defendants' right to move to dismiss the Derivative Litigation for failure to adequately plead demand futility, or make a pre-suit demand. Notwithstanding the foregoing, Plaintiff reserves his rights to seek any such discovery materials in the Derivative Litigation;

5. Plaintiff acknowledges that his right to receive written discovery responses, documents, deposition transcripts, and any other information described above is contingent upon his agreement to be bound by any confidentiality agreement or order governing the materials produced in the Securities Class Action or any related derivative action, with the express understanding that Plaintiff shall be entitled to use any such materials produced to him pursuant to this stipulation in the Derivative Litigation. If Plaintiff cannot become a party to any confidentiality agreement or order entered in the Securities Class Action or any related derivative action, he agrees that he will enter into a separate agreement with Defendants acknowledging his agreement to be bound by the terms of the confidentiality agreement or order entered in the Securities Class Action or any related derivative action, with the express understanding that Plaintiff shall be entitled to use any such materials produced to him pursuant to this stipulation in the Derivative Litigation, and further agrees that his acknowledgement agreement may be enforceable in the Derivative Litigation;
6. The Parties shall promptly notify each other of any related derivative lawsuits or threatened related derivative lawsuits of which they become aware;
7. Defendants shall promptly notify Plaintiff if the plaintiff in any related derivative lawsuit refuses to agree to a stay that is for the same or longer duration;
8. If the plaintiff in any related derivative lawsuit refuses to agree to a stay that is for the same or longer duration, after conferring with the opposing party, any party may lift the stay upon 30 days' notice via email to all of the undersigned counsel, in which event each party reserves the right to make a motion to stay the Derivative Litigation;
9. Plaintiff will promptly be advised of, and be permitted to participate in, any mediation proceedings and in any formal settlement talks in the Securities Class Action, in any related derivative action, and/or in any threatened related derivative action;
10. Notwithstanding this stay of the Derivative Litigation, Plaintiff may file an amended

1 complaint. Without waiving any defenses or objections, Defendants shall be under no
2 obligation to answer, move, or otherwise respond to any such complaints while the
3 State Derivative Action is stayed;

4 11. This Stipulation shall not preclude or prevent the Parties from stipulating to, or filing a
5 motion seeking, a court order lifting, modifying, or extending the terms of this
6 stipulation, and any Party's right to oppose such a motion; and

7 12. The existence of this stipulation, the contents thereof, and any negotiations or
8 proceedings in connection therewith shall not be deemed a presumption, concession,
9 finding, or admission by any of the Parties of any fault, liability, or wrongdoing.

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11 IT IS SO ORDERED.

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13 DATED: January 18, 2018

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15 Honorable Judge Jon S. Tigar
16 United States District Judge
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Dated: January 15, 2018

By: /s/ Benjamin Heikali

Benjamin Heikali